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10/511,694

04/28/2005

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EXAMINER

WONG, LESLIE A

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/511,694  
Filing Date: April 28, 2005  
Appellant(s): MUSSAWIR-KEY, FREDERICK WADE

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Steven J. Solomon  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 20, 2009 appealing from the Office action mailed January 16, 2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3,689,290	Blackstock et al	9-1972
GB 1601672	11-1981	
JP 03067544	3-1991	

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9, 10, 12-19, 21-24, 26, 28, 29, and 31-35 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Blackstock et al (US 3689290).

Blackstock et al teach a cheese substitute and process for preparing comprising a bland edible particulate, a vegetable fat component, a salt component, and parmesan flavor as is claimed (see entire patent, especially column 2, lines 6-61 and Examples 1 and 2).

The claims appear to differ as to the recitation of "non-liquid."

Blackstock et al teach any suitable fat including hydrogenated fats (see column 2, lines 46-55).

The non-liquid limitation would be inherent and/or obvious to that of Blackstock et al as the same components are used.

It is noted that the degree of hydrogenation plays a role in the hardness/softness of a fat.

Claims 6, 8, 11, 25, 27, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Blackstock et al (US 3689290) in view of JP 03067544 and GB 1601672.

Blackstock et al is cited as above.

The claims differ as to the specific use of soy flour and palm oil.

JP 03067544 discloses the conventional use of soy in the flour form for the production of a cheese-type product (see abstract).

GB 1601672 discloses the conventional use of palm oil in the production of cheese-type product (see entire document, especially page 3, lines 52-61).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use flour as taught by JP 03067544 and to use palm oil as taught by GB 1601672 in that of Blackstock et al because the use of flour as a source of soy and the use of palm oil is conventional in the simulated cheese art.

Appellant is using known components for their art-recognized function to obtain no more than expected results.

### **(10) Response to Argument**

For claim 1, Appellant argues that Blackstock et al teach using a liquefied fat or blend which includes a fat-liquefying step.

Claim 1 is a product claim not a process claim.

Blackstock et al teach a cheese substitute comprising a bland edible particulate, a vegetable fat component, a salt component, and parmesan flavor as is claimed (see entire patent, especially column 2, lines 6-61 and Examples 1 and 2).

Blackstock et al teach any suitable fat (see column 2, lines 46-55). Blackstock et al specifically teach fats that are **solid** above 100°F (see column 2, lines 51-55).

It is further noted that Appellant does not attach criticality to the fat. The specification teaches any suitable vegetable fat based product including fully hydrogenated oil, partially hydrogenated oil, and palm oil (see Specification, page 2, last paragraph).

For claim 17, Appellant argues that Blackstock et al teach using a liquefied fat or blend which includes a fat-liquefying step.

Blackstock et al teach any suitable fat (see column 2, lines 46-55). Blackstock et al specifically teach fats that are **solid** above 100°F (see column 2, lines 51-55).

Blackstock et al teach the blending of components where “blending can be carried out in any suitable manner” and that elevated temperatures are merely “preferable” (see column 3, lines 67-75). Appellant does not exclude additional steps.

It is further noted that Appellant teaches that the fat is heated to soften wherein the softening results in a fat that congeals as it cools (see Specification, page 6, first full paragraph). It is well-known that "congeal" may be defined as a change from a fluid to a solid state. Appellant does not further define either "soften," "liquefy," or "congeal." Blackstock et al teach the same components, process steps, and obtain the same final product.

As to claims 6, 8, 11, 25, 27, and 30, Appellant argues that Blackstock et al does not teach a non-liquid fat. Appellant's argument is addressed as set forth above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Leslie Wong/  
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